

# Sexual Harassment Awareness and Prevention Education Manual

This manual is to help educate the University community about sexual harassment in an effort to prevent its occurrence and to provide information about resources available at the University for addressing sexual harassment if and when it does occur.

The University of Montevallo is committed to providing an educational and employment environment free of harassment and other forms of discrimination on the basis of race, color, religion, national origin, gender, sex, disability, or veteran status of and by faculty, staff, and students. University policies relating to harassment and/or discrimination are published, are available in all administrative offices, and are also accessible on the University's web page.

All members of the University community should be aware that the University prohibits and will not tolerate sexual harassment of its faculty, staff, and students. Each member of the University community is expected to support efforts to keep the campus free of sexual harassment.

## Sexual Harassment is Illegal

The University has a legal obligation to provide a harassment/discrimination-free environment. Sexual harassment is prohibited under Title VII of the Civil Rights Act of 1964 as a form of employment discrimination on the basis of sex. Also, courts have held that sexual harassment of students violates Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in any educational program or activity receiving federal financial assistance.

Courts have recognized two types of unlawful sexual harassment. The first is *quid pro quo* (Latin for "this for that" or "something for something" referring to an exchange.) **Quid pro quo harassment** occurs when submission to unwelcome sexual advances is made a condition of employment or educational benefits (e.g., promotion or higher grade) or when rejection of such conduct results in tangible job or educational detriment (such as loss of promotion or lower grade.) If an individual does not suffer any detriment to his/her job or academic endeavors as a result of refusing to submit to sexual propositions, then quid pro quo harassment cannot be established. However such incidents, if known to the University and not stopped, may constitute hostile environment harassment.

The second type of unlawful sexual harassment is *hostile environment*. **Hostile environment harassment** occurs when unwelcome sexual or other conduct, directed toward an individual because of his or her gender, creates a hostile or abusive employment/educational environment that unreasonably interferes with the individual's work or academic performance. Generally, for such conduct to be sexual harassment it must be sufficiently severe or pervasive to alter the conditions of the complainant's employment/education and create an abusive employment/educational environment. In determining if conduct constitutes sexual harassment, courts generally use a "reasonable person" standard—i.e., whether a reasonable person in the same circumstances would find the conduct intimidating, hostile, or offensive. This standard rules out behavior that would be offensive or intimidating only to a hyper-sensitive individual.

## Definition of Sexual Harassment

The determination of what constitutes sexual harassment depends upon the specific facts and the context in which the conduct occurs, but sexual harassment generally includes any repeated, unwanted: (1) verbal behavioral sexual advance; (2) sexually explicit or derogatory remarks, pictures, jokes, cartoons, or other non-verbal matter; and/or (3) statements made in the workplace or classroom that are sexually offensive or objectionable, when

- submission to such conduct is made either explicitly or implicitly term or condition of an individual's employment or a grade;
- submission to, or rejection of, such conduct is used as a basis for employment or grading decisions affecting the individual; or
- such conduct has the purpose or effect of substantially interfering with work or class performance, or of creating an intimidating, hostile, or offensive work or classroom environment.

However, sexual harassment is not just about sexual conduct. It includes harassing behavior that may not be overtly sexual but is directed at an individual because of his/her gender and creates an intimidating, hostile work or educational environment (variously referred to as sex-based or gender harassment.)

**Sexual harassment** occurs in a variety of situations that share a commonality: the inappropriate and unwelcome introduction of sexual content or attention in a situation where sex should be irrelevant. **Sexual harassment** is distinguished from normal friendly social interactions by the introduction of elements of coercion, threat, intimidation, or insult. **Sexual harassment** does not refer to occasional compliments of a socially acceptable nature; it refers to behavior that is offensive, that lowers morale, and that interferes with the work or education of its recipients. **Sexual harassment** does not refer to friendships or mentoring relationships that enhance the educational/employment environment; it refers to behavior that adversely affects the educational/employment environment. **Sexual harassment** includes sexual advances or demeaning verbal behaviors that are repeated and unwanted, even where they are exclusively verbal and not coercive. **Sexual harassment** can occur even when the victim suffers no tangible job detriment.

Generally, a single sexual joke, offensive epithet, or request for a date does not constitute sexual harassment; however, being repeatedly subjected to such jokes, epithets, or requests day after day despite having voiced objections may be sexual harassment. Coercive behavior, including suggestions that academic or employment reprisals or rewards will follow the refusal or granting of sexual favors, constitutes gross misconduct; a single incident may be grounds for dismissal as an employee or as a student.

## Examples of Sexual Harassment

Sexual harassment may occur between individuals of different sexes or of the same sex provided that the harassment is directed at the recipient because of his/her gender. Sexual harassment may occur between individuals in a hierarchical relationship (e.g., between supervisor and employee or between faculty member and students) or between peers (e.g., between co-workers or students.) It may be caused by "outside parties"; i.e., vendors, patrons, service persons, or other individuals who are not members of the University community but who come in contact with faculty, staff or students in the employment/educational environment. Also, the complainant does not have to be the person who is harassed, but may be anyone adversely affected by the offensive conduct. Examples of indirect, third-party harassment include conversations about sex in the hearing range of others to whom such conversations are unwelcome.

Sexual harassment can be verbal, nonverbal, or physical. Severe acts such as unwelcome sexual grabbing may be judged harassing based on a single act while less offensive actions may constitute harassment if repeated and/or pervasive. Listed below are examples of behavior that in the employment or educational environment could constitute sexual harassment.

### ***Verbal***

- Sexual innuendoes or other sexually suggestive comments
- Sexually explicit questions, jokes or anecdotes
- Sexual slurs
- Graphic comments about an individual's clothing, body or sexual activities
- E-mail circulation or sexual materials or harassing messages
- Graffiti
- Repeated unsolicited propositions for dates and/or sexual intercourse
- Initiating and/or spreading rumors about a person's sex life
- Sexually suggestive or insulting sounds

### ***Nonverbal***

- Lewd gestures
- Indecent exposure
- Display of sexually suggestive objects or pictures in the workplace or classroom without a job-related or educational purpose

### ***Physical***

- Patting, pinching or intentional brushing against the body in a sexual manner
- Impeding or blocking movement
- Invading a person's body space, standing closer than appropriate or necessary for the work or activity being done
- Attempted or actual kissing or sexual touching

- Physical assault, coerced sexual intercourse, rape or attempted rape (See University Policy 01:125, Sexual Assault.)

The preceding examples are indicative of behavior that **may** constitute sexual harassment, or be considered part of a pattern of sexual harassment. They are not intended to be exhaustive and are used as illustrations only. Courts have also held that sexual harassment can occur even when the victim suffers no tangible job detriment and the University is not informed of the problem.

Whether a particular act or course of conduct constitutes sexual harassment depends on a review of all the circumstances, including frequency, location and severity of the conduct, i.e., whether the conduct is physically threatening or humiliating as opposed to merely an offensive utterance and whether it unreasonably interferes with a person's employment environment, educational environment, or environment for participation in a University activity. A victim is not necessarily required to object directly to the offending person in order to be deemed to be offended by it.

## Intent vs. Impact

Sexual harassment is unwelcome behavior; unwelcome to the individual to whom it is directed regardless of the intention of the alleged harasser. "I didn't mean anything by it," "I was just kidding," "She can't take a joke," "I'm too old to be doing that," are neither excuses nor defenses.

According to the law, actual intent is irrelevant; what *is* relevant is the impact the behavior has on the recipient. Courts have found that a hostile environment exists if the victim/complainant believes the environment to be abusive and a reasonable person would find it to be an abusive environment.

## Sexual Harassment and Academic Freedom

The University wishes to preserve academic freedom and is obligated as a public institution to observe the First Amendment free speech rights of students and faculty. Thus, in cases of alleged harassment, the protections of the First Amendment must be considered if issues of speech or artistic expression are involved.

But, even in the contexts of public discussion and education instruction, speech or conduct of a sexual or hostile nature may exceed the protections of academic freedom and free speech. Courts have held that sexual speech in the classroom that does not further the learning process or is not germane to the academic subject matter is not protected by the First Amendment. Those holdings are consistent with the American Association of University Professors' *Statement on Freedom and Responsibility*; which recognizes that harassment is not a proper exercise of academic freedom and is itself inconsistent with the maintenance of academic freedom on campus.

## Personal Checklist

Any of the following behaviors could possibly constitute sexual harassment if they are sufficiently severe, repeated, and unwelcome to the recipient. *Do you display any of the following behaviors?*

- Tell sexual jokes, used sexual innuendoes or make sexual gestures?
- Ask questions about a faculty, staff, student or colleague's social/sexual life?
- Talk about your own social/sexual life (sexual encounters, prowess, or preferences)?
- Make sexual comments about a person's clothing, anatomy or appearance?
- Use crude language?
- Display or circulate sexually suggestive pictures, cartoons or other materials?
- Repeatedly ask a person out on a date after that person has repeatedly declined?
- Unnecessarily touch, kiss or hug other persons?
- Demean or ridicule a gender through comments or jokes?

*If you engage in one or more of these behaviors, does the recipient of your behavior equally initiate and participate in similar behavior? Or are you always the one who initiates the behavior or the only one who engages in the behavior?* Remember that even if the direct recipient indicates by equal initiation and equal participation that your behavior is not offensive, it may be offensive to others who overhear or are otherwise indirectly exposed to it.

*Do you supervise or have other authority or professional influence?* The best course of action for those with supervisory or other authority is to avoid sexual conduct in the workplace or classroom, especially in relationships of unequal power where individuals may not feel comfortable with the conduct but may not feel free to object.

# Eliminating Sexual Harassment

Faculty, staff, students, or visitors to the campus who feel sexually harassed may object directly to the offending person. This may be sufficient to prevent reoccurrence of the offensive behavior. If it does not or if you feel unable to object, you are encouraged to seek assistance from your supervisor, an appropriate administrator, or through established sexual harassment reporting procedures.

Early efforts to control a potentially harassing situation are very important. Behavior believed to be sexual harassment should be reported immediately, especially if it is recurring. The University must know about incidents of sexual harassment in order to stop them and to prevent future incidents.

**Administrators and others in a supervisory role** must take sexual harassment seriously.

Failure --

to ensure that employees in their unit are educated and sensitized about sexual harassment issues, to take appropriate steps to prevent and stop sexual harassment in their areas of responsibility, and

to assist an individual seeking to file a complaint about sexual harassment in their unit or area of responsibility with contacting the appropriate complaint-receiving official(s)

may cause serious consequences for the University and may be considered a breach of supervisory responsibility. To ensure that you are meeting your responsibilities for maintaining an employment and educational environment free of sexual harassment, you should:

Know the University's sexual harassment policy; distribute and explain the policy to employees.

Educate employees about behaviors that constitute sexual harassment or could be easily misinterpreted as sexual harassment.

Discuss issues of sexual harassment in faculty/staff meetings.

Inform students and your employees that you will take immediate and appropriate action when sexual harassment is brought to your attention and follow through with that commitment. If you receive a complaint, document your actions.

Watch for potential sexual harassment behaviors at work or in the classroom; even if the behavior does not seem severe or pervasive enough to constitute sexual harassment, you will want to take steps to eliminate it before it causes serious problems.

After a complaint of sexual harassment is filed, watch for acts of retaliation against the complainant(s) or witness(es).

If it is determined that sexual harassment has occurred, take steps to repair the environment and prevent further harassment; e.g., arrange for special training opportunities. Make follow-up inquiries to ensure the behavior has stopped and there has been no retaliation.

Serve as a role model for the faculty, staff and students you supervise by exhibiting appropriate workplace behavior; be aware of the intimidating effects your power as a supervisor may have on subordinates or your power as a faculty member may have on students.

**All members of the University community** should avoid behavior or conduct toward another member which could be interpreted as sexual harassment. You should:

Know and support the University's sexual harassment policy.

Conduct yourself in a professional, business-like manner that is appropriate for your work/educational environment.

Be aware of how your behavior might have a negative impact on others; ask yourself:

Could my behavior be interpreted as inviting sexual behavior?

Are my jokes directed towards or about a particular gender?

Are my comments about others work-related or personal?

Would I want a loved one of mine to be the recipient of my behavior?

Be respectful and courteous of other faculty, staff and students.

**Recipients of unwanted sexual attention or behavior** should take one or more of the following steps:

**Object.** Make your feelings known; silence may be viewed as consent.

**Say “No.”** Telling an individual directly and clearly that you find his/her behavior offensive and you want it to stop may deter repeated or more progressive acts. For example, you might say “I want our relationship to be strictly professional and I do not want you ever to touch or speak to me in that way again.” Persons perceived to be engaging in sexual harassment may not realize that a particular behavior is offensive or may believe that their conduct is acceptable or appreciated. An objection (without apology or smiling) will prevent any misunderstanding about whether the behavior is welcome.

**Put it in writing.** If the offensive behavior continues and you still choose to handle the situation yourself, reinforce your demand for the behavior to stop with a follow-up letter. Describe the offensive behavior and how you felt about it, state that you want it to stop and you will take additional action if it is not stopped. Keep a copy.

While responding directly, as described above, to the offending person is encouraged and, in some cases, can stop the unwelcome behavior, you are not obligated to do so before pursuing other alternatives below.

**Seek assistance or intervention.** If the offensive behavior does not stop or you do not feel capable of confronting the behavior yourself, seek assistance: from your supervisor (or next higher supervisor if your supervisor is the source of the problem); from the supervisor or department head responsible for the person you feel is harassing you; from the Director of Human Resources (campus EO officer); or if a student, from the Vice President for Student Affairs.

**Potential offenders** should understand that sexual harassment is a serious matter that can have serious consequences. You should:

Pay attention to the response of others in order to avoid unintentional offense.

If you know offense was taken by your behavior, apologize and do not repeat the behavior.

Do not assume that employees, colleagues or students enjoy or want to hear risqué jokes or sexually oriented comments about their appearance, to be touched or flirted with, or to be propositioned for dates or sexual favors.

If someone declines a polite offer to socialize outside of work/class, drop the matter and do not approach the individual again.

Do not take warnings or complaints about sexual harassment lightly.

If you are accused of sexual harassment, seek advice from your supervisor, from your Division Head, from the Director of Human Resources (University EO compliance officer), or if a student, from the Vice President for Student Affairs. Do not retaliate in any way against the individual who complained or others who participate in investigation of the complaint.

Cooperate with complaint investigations. You will have an opportunity to explain the situation from your perspective if you think your behavior was acceptable or that you are being falsely accused.

## Complaints

The University encourages prompt reporting of sexual harassment concerns or complaints so that appropriate action can be taken. The University provides multiple avenues, both formal and informal, for addressing issues of sexual harassment. All complaints are handled in as timely and confidential a manner as practical.

Formal investigation of a complaint normally includes conferring with the parties involved and any named or apparent witnesses. In some cases, a single individual may conduct the investigation; in others, it may be conducted by a team or committee. After due investigation, to the extent allowed by law, both parties will be informed of the outcome.

## Confidentiality

To protect the privacy of both the complainant and the accused, complaints of sexual harassment are handled with confidentiality insofar as it does not interfere with the University's obligation to investigate and resolve issues of sexual harassment. However, remember that strict confidentiality cannot in all instances be assured in light of the University's commitment to conduct an appropriate investigation of complaints.

All parties involved in a sexual harassment investigation have an obligation to cooperate and to refrain from discussing the case. The University requests that persons with knowledge of complaints refrain from disseminating or communicating information about the parties and content of complaints to persons who do not have a justifiable need to know the information, except as may be necessary or appropriate to ensure compliance with University policy.

## **Retaliation is Prohibited**

University policy and federal law prohibit retaliation against individuals for reporting behavior that they believe to be sexual harassment or participating in an investigation of sexual harassment. Retaliation against any faculty, staff or student for reporting or providing information about sexual harassment is strictly prohibited and can subject the offender to disciplinary action independent of the merits of the sexual harassment allegation.

## **False or Frivolous Allegations**

An intentionally false or frivolous allegation of sexual harassment is a serious matter. Any person who willfully makes or participates in making a false or frivolous complaint of sexual harassment or knowingly provides false information during the investigation of a sexual harassment complaint is subject to disciplinary action.

Failure to prove a claim of sexual harassment is not equivalent to a false allegation.

## **Corrective Measures**

The University will take appropriate action to stop or correct sexual harassment when it is found to have occurred. Possible corrective measures may include an apology, explicit agreement about future conduct, participation in training sessions about sexual harassment, changes in workplace assignment, course substitution, or other appropriate action.

Corrective measures may also include disciplinary action imposed on individuals engaging in sexual harassment or on supervisors who disregard complaints of sexual harassment or fail to take steps within their power to stop sexual harassment occurring within their areas of responsibility. Disciplinary actions will depend on the particular circumstances of each case.

## **Disciplinary Action**

As noted in the University's *Faculty Handbook*, *Staff Handbook*, *Fledgling* (student handbook) and other University publications, persons engaged in sexual harassment within the University community are subject to the full range of disciplinary actions, including separation from the University. Supervisors who fail to take appropriate action when sexual harassment is brought to their attention are also subject to disciplinary action.

In addition, persons accused of sexual harassment in civil proceedings may be held personally liable for damages. Some forms of sexual harassment are violations of criminal laws and thus can result in criminal penalties.

## **Note on Amorous or Sexual Relationships**

Faculty and staff are expected to maintain appropriate professional boundaries with students or employees for whom they have professional, supervisory, or administrative responsibility.

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Amorous or sexual relationships are inappropriate in the context of educational or employment supervision and evaluation and present serious ethical and legal concerns to the University, even when both parties have apparently consented to the development of such a relationship.

While truly consensual relationships do not constitute sexual harassment (which by definition is unwelcome conduct), these relationships are problematic if the parties are of unequal power, because the validity of the consent can be questioned. Also, circumstances may change and conduct that was previously welcome may become unwelcome. In retrospect, the relationship may be perceived differently by each party.

Generally, consensual relationships that occur between peers do not present the same concerns, although the working and learning environments of the University are not appropriate places for the manifestation of sexual intimacy. (See University Policy 01:150, Amorous Relationships, for additional language.)

## **Race, Religious, National Origin, and Other Harassment**

Similar concerns and responsibilities with regard to sexual harassment apply to harassment based upon race, color, religion, national origin, age or disability. Harassment of any kind is inappropriate and will not be tolerated. Conduct that does not rise to the level of harassment as defined by law, but nonetheless impairs the effective functioning of the University, undermines the trust of students or faculty or staff, or compromises the University's integrity is also inappropriate.

## **Conclusion**

This guide has been developed as a training resource to create greater awareness among faculty, staff and students of the types of conduct that may constitute sexual harassment and of the steps that can take in helping to eliminate such conduct on the University campus. As members of the University, we should adhere to a standard of conduct that demonstrates mutual respect, civility, and common courtesy toward one another.